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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-
10725 LBR

**Objection of USACM Trust To Maria Pena
Claim Filed in Wrong Debtor's Case; Objection
of FTDF to Proposed Allowance of Claim**

Hearing Date: October 15, 2007
Hearing Time: 9:30 a.m.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC



Maria Pena filed Proof of Claim No. 10725-492 against USA Commercial Mortgage Company in the amount of \$75,000.00. The USACM Liquidating Trust (the "USACM Trust") hereby objects to Ms. Pena's claim. The basis for the claim is shown on its face and in the attachment as an investment in USA Capital First Trust Deed Fund, LLC ("FTDF"). Accordingly, it is a claim that was incorrectly filed in the USA Commercial Mortgage Company ("USACM") case. The USACM Trust respectfully requests that this claim be disallowed as a claim against USACM. Any claim held by Ms. Pena against USACM solely on account of her investment in FTDF is derivative of FTDF's claims against USACM. Under a settlement approved by the Court on June 12, 2007, all such FTDF claims were settled, with FTDF holding a \$7.0 million allowed general unsecured claim and beneficial interest in the USACM Liquidating Trust. The equity interest holders in FTDF will share in any recovery on account of that claim.

The Official Committee of Equity Security Holders of FTDF ("FTDF Committee") further objects to allowance of Ms. Pena's claim as a claim against the FTDF estate.

Bankruptcy Code section 502 authorizes a party in interest to object to claims. See 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the creditor has the ultimate burden of persuasion as to the validity and amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

The FTDF Committee has analyzed the Pena claim and has determined that it has been incorrectly designated as a "proof of claim." Pursuant to Bankruptcy Code section 502, a "creditor . . . may file a proof of claim." An equity security interest holder,



1 however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code
2 section 101(16) defines "equity security" to include a "share in a corporation, whether or
3 not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to
4 purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11
5 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of
6 a limited liability company, a limited liability company must pay liabilities to creditors
7 before paying liabilities in respect of profits and/or capital to members of the limited
8 liability company).

9 The Pena claim clearly reflects that it is based on its membership in the FTDF and
10 not based on any debt the claimants hold against the FTDF. For example, annexed to the
11 Pena claim are account statements that list the number of shares Ms. Pena holds in the
12 FTDF, the price of such shares, and the FTDF Member's account identification number.
13 Membership interests and/or shares in the FTDF clearly fall within the definition of
14 "equity security" under Bankruptcy Code section 101(16). Thus, the holders of the equity
15 interests are equity security interest holders of the FTDF and do not hold unsecured claims
16 against the FTDF estate.

17 This objection does not seek to prejudice the rights of Ms. Pena as an FTDF
18 member to recover from the FTDF estate on account of her membership interest of
19 \$75,000, which is the amount asserted in the Pena claim. Ms. Pena shall retain her interest
20 in FTDF in the amount of \$75,000 as reflected in the books and records of FTDF. Indeed,
21 Ms. Pena has received distributions based on this FTDF membership interest to date, with
22 no objection.

23 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order
24 that will disallow the Pena claim against USACM, disallow any proposed allowance of the
25 Pena claim in the FTDF case, and appropriately allow Ms. Pena to retain her equity
26



1 interest in the FTDF in the amount of \$75,000 as reflected in the books and records of
 2 FTDF as of the bankruptcy petition filing date.

3 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of
 4 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

5 Dated: August 8, 2007.
 6

7 By: /s/ Eve H. Karasik
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1 Copy of the foregoing
2 Mailed this 8th day of
3 August, 2007 to:

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8 By /s/ Renee L. Creswell

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